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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Redeployment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies	)	ET Docket No. 92-9

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FCC MAIL BRANCH

COMMENTS OF ROCHESTER TELEPHONE CORPORATION

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Introduction and Summary

Rochester Telephone Corporation ("Rochester"), on its behalf and that of its exchange carrier subsidiaries,[1/] submits these comments in response to the Commission's Notice in this

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1/ AuSable Valley Telephone Company, Inc., Breezewood Telephone Company, C, C & S Telco, Inc., Canton Telephone Company, Citizens Telephone Company, Inc., DePue Telephone Company, Enterprise Telephone Company, Fairmount Telephone Company, Inc., Highland Telephone Company, Inland Telephone Company, Lakeshore Telephone Company, Lakeside Telephone Company, Lakewood Telephone Company, Lamar County Telephone Company, Inc., Midland Telephone Company, Mid-South Telephone Company, Inc., Midway Telephone Company, Minot Telephone Company, Mondovi Telephone Company, Monroeville Telephone Company, Inc., Mt. Pulaski Telephone & Electric Company, Ontonagon County Telephone Company, Orion Telephone Exchange Association, Oswayo River Telephone Company, Prairie Telephone Company, S & A Telephone Company, Inc., The Schuyler Telephone Company, Seneca-Gorham Telephone Corporation, Southland Telephone Company, St. Croix Telephone Company, Sylvan Lake Telephone Company, Inc., The Thorntown Telephone Company, Inc., Urban Telephone Corporation, Viroqua Telephone Company, Vista Telephone Company of Iowa and Vista Telephone Company of Minnesota.

proceeding.[2/] In the Notice, the Commission has proposed reallocating 220 MHz in the 1.85-2.20 GHz bands, currently used primarily for private operational fixed and common carrier microwave services, from those services and to reserve that spectrum for emerging wireless technologies.

Rochester generally agrees with the Commission's tentative conclusion that the reservation of specific blocks of spectrum will encourage the development and deployment of new technologies.[3/] In addition, the Commission's proposals to minimize disruption to existing licensees' operations correctly recognize the necessity for balancing the needs of incumbent licensees with the need for encouraging the deployment of new technologies. Indeed, in reserving spectrum for emerging technologies, the Commission should attempt to insure that existing licensees are made whole.

Toward this end, Rochester suggests that the Commission permit negotiated arrangements between existing licensees and new service providers. The Commission, however, should monitor this process closely to prevent it from resulting in a windfall for any party. For example, the Commission may wish to consider a cap on the compensation to be paid to incumbent

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2/ Redeployment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies, ET Dkt. 92-9, Notice of Proposed Rulemaking, FCC 92-20 (released Feb. 7, 1992) ("Notice").

3/ Id., ¶ 8.

licensees to the remaining economic value of their equipment, plus the costs of relocating to alternative frequencies or media.

Second, the Commission's proposed ten to fifteen year transition plan is generally reasonable. This transition should provide incumbent licensees with sufficient time to plan for and implement the relocation of their operations to alternative frequencies or transmission media. The Commission, however, should define carefully its proposal to issue new licenses for operational fixed services on a secondary basis only and should reexamine its proposal to exempt state and local governmental licensees from its proposed transition plan.

Third, the Commission should carefully scrutinize applications for spectrum in the proposed emerging technologies bands. Such a hard look is necessary both to insure that this band is actually used to bring innovative new services to the public and to preclude the filing of speculative applications for the sole purpose of financial gain.

Argument

I. THE COMMISSION SHOULD PERMIT, BUT MONITOR, NEGOTIATED ARRANGEMENTS FOR LICENSE TRANSFERS.

The Commission has correctly concluded that it must protect the economic interests of existing licensees.[4/] Those

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4/ *Id.*, ¶ 22.

entities have invested substantial resources in their facilities and disruption of their operations could entail severe economic consequences. This result should be avoided to the maximum extent possible.[5/]

Negotiated arrangements, under which new licensees could enter into financial arrangements with existing licensees, would serve to achieve the balance that the Commission seeks. The Commission, however, should monitor this process closely. The negotiated settlement process could allow one party or another to exploit significant inequalities in the bargaining process to reap windfall gains. The existence of such a potential could both discourage existing licensees from relocating in advance of the expiration of their licenses and encourage the filing of speculative applications in the proposed emerging technologies band to coerce payment from existing licensees whose license term is nearing expiration.

The Commission should establish, as a general principle, the goal of making existing licensees whole for relocating to alternative frequencies or media and direct that negotiations

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5/ In this regard, the Commission's proposal to award tax certificates to incumbents to induce them to surrender their licenses and migrate to other, non-radio media (id., ¶ 20 n.17) has merit. This proposal is consistent with the Commission's goal of keeping existing licensees whole. At the same time, it would provide significant incentives for existing licensees to surrender their licenses to new service providers.

be guided by that principle. Rochester is not proposing specific criteria or restrictions at this time, because it is impossible to predict how the negotiation process will work in practice. If, however, it appears that the process is being abused, the Commission should be prepared to curtail such abuses, as it has in the cellular field.[6/]

II. THE COMMISSION'S PROPOSED TRANSITION PERIOD IS GENERALLY REASONABLE.

The Commission has proposed providing existing licensees with a ten to fifteen year transition period during which they would continue to occupy 2 GHz frequencies on a co-primary basis with new licensees.[7/] The Commission has also proposed granting new licenses in the emerging technologies bands for existing uses on a secondary basis only.[8/] Finally, the Commission has proposed exempting state and local governmental licensees from the proposed relocation requirements.[9/] The Commission's proposals are generally reasonable. However,

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6/ See, e.g., Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, CC Dkt. 90-358, Report and Order, FCC 91-400, ¶ 31 (released Jan. 31, 1992).

7/ Notice, ¶ 24.

8/ Id., ¶ 23.

9/ Id., ¶ 24.

the Commission should carefully define its secondary basis licensing proposal and should not afford a special exemption to governmental licensees.[10/]

The proposed transition period will, in general, permit an incumbent licensee to utilize existing equipment for the remainder of its useful economic life. Together with the proposal to permit negotiated financial arrangements between incumbent licensees and new services providers, this approach should permit an orderly, albeit lengthy, transition to the existence of specific blocks of spectrum reserved for emerging technologies.

The Commission's proposal to award new licenses for existing uses on a secondary basis only, however, could create severe, unintended hardships for existing microwave licensees. For example, if the Commission intends to grant secondary status to a new leg of an existing microwave hub -- or to a major modification of an existing leg -- on a secondary basis only, this could have the unintended effect of placing an

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10/ The Commission has explicitly declined to consider use of the 1.71-1.85 GHz government fixed, mobile and space band for relocation of some of the existing 2 GHz users, because the Commission does not regulate the use of this band. <u>Id.</u>, ¶¶ 11 n.11, 21. Given this jurisdictional limitation, the Commission's decision makes sense. However, the Commission should continue, as it indicated it has begun (<u>id.</u>, ¶ 21 n.18), its dialogue with the National Telecommunications and Information Administration concerning the availability of spectrum in this band.

existing operator's entire hub facility at risk of being terminated on relatively short notice. Such a result would be inconsistent with the Commission's desire to ensure an orderly transition from use of this block of spectrum by existing licensees to new licensees. The Commission should, at a minimum, make clear that its proposed secondary status rule applies only to entirely new facilities and not to modifications of or additions to existing facilities. To preserve the integrity of the transition period, the Commission should decline to restart the clock each time it approves a major modification or grants a new license for a route that utilizes existing facilities.

In addition, the Commission should reconsider the necessity of permanently exempting state and local governmental licensees from the proposed transition plan. Although Rochester is sympathetic to the financial concerns of state and local governments, the lengthy transition period -- during which existing licensees' equipment should reach the end of their useful economic lives -- together with the negotiated financial arrangements proposal, should protect state and local governmental licensees from undue financial hardship. As does the Commission,[11/] Rochester does not wish to disrupt police and health operations and would support liberal waivers of the

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11/ *Id.*, ¶ 24.

proposed transition rules upon a showing of economic hardship. A blanket exemption, however, is overbroad.

III. THE COMMISSION SHOULD SUBJECT EMERGING TECHNOLOGIES APPLICANTS TO STRINGENT TECHNICAL AND FINANCIAL SCRUTINY.

As the Commission has discovered in the cellular field, the availability of a block of spectrum will inevitably encourage a flood of applications with no purpose other than speculation.[12/] To preclude this from occurring, the Commission should subject emerging technologies applicants to stringent technical and financial scrutiny. The rules that the Commission has recently adopted for evaluating competing applications during the cellular license renewal process[13/] could form a blueprint for evaluating the qualifications of emerging technologies applicants. In particular, the Commission should require applicants to demonstrate either the technical viability of a proposed new service or a quantifiable improvement to an existing service, e.g., increased data throughput. The Commission should firmly discourage, if not prohibit, so-called "cookie-cutter" applications.

The Commission should also require a convincing demonstration of an applicant's financial ability to construct

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12/ See supra at 5 n.6.

13/ Id., ¶¶ 22-29.

and operate the system that it proposes. The cellular renewal rules again could serve as a model for such a demonstration.

Finally, although the Commission has not raised this suggestion, it should reject any proposal that it disqualify exchange carriers and cellular providers from holding licenses in the proposed emerging technologies bands. Such a rule would be patently anticompetitive and discourage the introduction of innovative new services to the public.

Conclusion

For the foregoing reasons, the Commission should implement its proposal to reserve a block of spectrum for emerging technologies in a manner consistent with the modifications set forth herein.

Respectfully submitted,

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